

### **REMARKS**

In the Office Action, the Examiner stated that previously added claims 54-73 have been renumbered claims 53-72, respectively, because no claim 53 had been presented. Claims 53-72 have been amended to correct the dependencies. Claim 60 has been cancelled. Accordingly, claims 20-59 and 61-72 are pending in the application. No new matter has been added. Reconsideration and allowance of the claims in light of the amendments and remarks herein are respectfully requested.

### **Claim Objections**

The examiner objected to the numbering of previously added claims 54-73. Claims 54-73 have been renumbered as claims 53-72, respectively, as stated by the Examiner. The dependencies have been corrected by the present amendment. Withdrawal of the objection is respectfully requested.

### **Rejection under 35 U.S.C. § 112**

Claim 66 stands rejected as being dependent from itself. Claim 66 has been amended to depend from claim 65. Withdrawal of the 35 U.S.C. § 112 rejection is respectfully requested.

### **Non-Statutory Double-Patenting Rejection**

Claim 60 stands rejected under the judicially created doctrine of double patenting. Claim 60 has been cancelled and withdrawal of the double-patenting rejection is respectfully requested.

### **Rejection under 35 U.S.C. § 103**

Claims 20-72 stand rejected pursuant to 35 U.S.C. § 103(a). In particular, claims 20-26, 28-34, 36-40, 42-47, 49-54, 56-59, 61-65, 67, 68, 70 and 71 stand rejected as being unpatentable over Bouve *et al.* U.S. Patent No. 5,682,525 ("Bouve") in view of Ogasawara U.S. Patent No.

6,123,259. Claims 27, 35, 41, 48, 55, 60, 66, 69, and 72 stand rejected as being unpatentable over Bouve in view of Ogasawara in further view of Bianco U.S. Patent No. 5,047,416.

The rejection of each pending claim is based, at least in part, on Ogasawara. Applicant respectfully submits that the invention of claims 20-59 and 61-72, at least insofar as the portions of the invention are disclosed by Ogasawara, was completed before the filing date of Ogasawara. The attached Declaration Under Rule 131 sets forth facts establishing completion of at least the relevant portions of the invention in the United States before the filing date of Ogasawara. The Declaration references a paper describing an experimental prototype referred to as the Shopper's Eye. The paper was presented at a conference less than one year prior to the priority date of the present application, and therefore, the paper does not constitute prior art under 35 U.S.C. § 102(b).

The paper also describes testing of the prototype. The testing was conducted under the control of the applicant for the purpose of testing claimed features. To the extent that any testing may have been conducted in the public eye, such testing does not constitute public use pursuant to 35 U.S.C. § 102(b) because the testing was the result of a bona fide effort of applicant to perfect the invention and to ascertain that it will answer its intended purpose. *See EZ Dock v. Schafer Sys., Inc.*, 276 F.3d 1347, 1353 (Fed. Cir. 2002) (use or sale of invention in the public does not constitute public use under 35 U.S.C. § 102(b) where such use under the control of the inventor to test claimed features of the invention). Therefore, the use of the Shopper's Eye as described in the reference does not constitute prior art under 35 U.S.C. § 102(b).

Because Ogasawara issued after the priority date of the present invention, Ogasawara could only be prior art to claims 20-59 and 61-72 under 35 U.S.C. § 102(e). Therefore, the Declaration removes Ogasawara as prior art against claims 20-59 and 61-72. Applicant

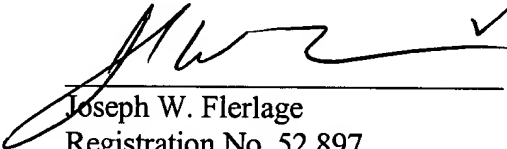
respectfully requests that the rejection of claims 20-59 and 61-72 under 35 U.S.C. § 103 be withdrawn.

**CONCLUSION**

According to the amendments and reasons presented above, the application is in a condition for allowance. Withdrawal of the 35 U.S.C. § 103 rejection is respectfully requested and allowance of all pending claims is earnestly solicited. Should the examiner feel that a telephone conference would expedite allowance of the application, the examiner is invited to call the undersigned attorney at the telephone number listed below.

Respectfully submitted,

August 15, 2003

A handwritten signature in black ink, appearing to read 'J. Flerlage', is written over a horizontal line. A checkmark is drawn to the right of the signature.

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